

The Department “will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary.” 86 Ill. Adm. Code 270.115(b)(2). (This is a PLR.)

December 3, 2003

Dear Xxxxx:

This letter is in response to your letter dated July 24, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to TAXPAYER for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither TAXPAYER nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

Our client, TAXPAYER hereby requests a Private Letter Ruling that determines that the Taxpayer's procedure for accepting sales order proposals from customers, as discussed below, will result in all sales, consummated in that manner, and delivered within the State of Illinois, being sourced to CITY, Illinois for purposes of the Municipal Retailer's Occupation Tax. Litigation is not pending with the Illinois Department of Revenue (**‘Department’**) involving the Taxpayer or the issues presented below. Further, the Taxpayer certifies that: (1) the Department has not previously ruled on the same issue presented below for the Taxpayer or predecessor, although the Taxpayer did previously submit a request for Private Letter Ruling, and did receive a Private Letter Ruling regarding similar issues for its operations in a separate municipality from which this request for Private Letter Ruling refers; and (2) neither the Taxpayer nor any

representative of the Taxpayer has previously submitted the same or similar issues to those presented below to the Department but withdrew them before a letter ruling was issued.

STATEMENT OF FACTS

The Taxpayer's company headquarters are located in CITY, Illinois. References to company headquarters herein shall refer to the Taxpayer's company headquarters located in CITY, Illinois.

The Taxpayer is a contract furniture distributor that sells custom office furniture solutions throughout Illinois. Due to the custom nature of the business, the Taxpayer's sales process is a complex one that involves several meetings and consultations with the customer, usually at the customer's offices, to design the product and discuss the possible terms of the transaction. The Taxpayer sells its product through its salespeople who are located throughout northern Illinois. Four salespersons work from their home offices, three work from a CITY2, Illinois location and eleven work from the company headquarters. Ultimately, however, each sale is consummated in a similar manner. Upon finalization of the design of the product and proposed terms of the transaction, the Taxpayer's salespeople direct the company headquarters to generate a proposal out of its internal accounting system and then transmit the proposal to the customer via facsimile, first class mail, email or messenger. The customer then reviews the proposal and either signs it or generates an internal purchase order and remits the signed proposal or the purchase order with the unsigned proposal to the Taxpayer at the company headquarters. If the terms of the proposal are satisfactory, the Taxpayer's Executive Management at the company headquarters approves the proposal and the order is prepared for delivery. All credit approval decisions and payment arrangements are made directly with the company headquarters.

The final acceptance of all material proposals lies solely with the Executive Management at the Taxpayer's company headquarters. Before this point, no employee of Taxpayer has authority to make any final acceptance of any sales order proposal.

RULING REQUESTED

1. Each sale that the Taxpayer makes final acceptance of, in accordance with the procedures discussed herein, at the Taxpayer's headquarters in CITY, Illinois, should be sourced to the CITY company headquarters for purposes of the Municipal Retailers Occupation Tax.

RELEVANT AUTHORITY

I. Illinois Regulation, 86 Ill. Adm. Code 270.115 (Jurisdictional Questions)

(a) *Mere Solicitation of Orders Not Doing Business:*

(1) For a seller to incur Home Rule Municipal Retailers' Occupation Tax liability in a given home rule municipality, the sale must be made in the course of such seller's engaging in the retail business within such municipality. In other words, enough of the selling activity must occur within the home rule municipality to justify concluding that the seller is

engaged in business within the home rule municipality with respect to that sale.

(2) For example, the Supreme Court had held the mere solicitation and receipt of orders within a taxing jurisdiction (the State), where such orders were subject to acceptance outside the taxing jurisdiction and title passed outside such jurisdiction, with the goods being shipped from outside such jurisdiction to the purchaser in such jurisdiction, did not constitute engaging in the business of selling within such jurisdiction. This conclusion was reached independently of any question of interstate commerce and so would apply to a home rule municipality as the taxing jurisdiction as much as to the State as the taxing jurisdiction.

(b) *Seller's Acceptance of Order:*

(1) Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, that the seller's acceptance of the purchase order or other contracting action in the making of the sale contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of Sections (f) and (g) of this Section, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the home rule municipality or by someone working out of such place of business, the seller incurs Home Rule Municipal Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.

(2) The Department will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary.

(3) If a purchaser's order is accepted outside this State but the tangible personal property which is sold is in an inventory of the retailer located within a home rule municipality at the time of its sale (or is subsequently produced in the home rule municipality), then delivered in Illinois to the purchaser, the place where the property is located at the time of the sale (or subsequent production in Illinois) will determine where the seller is engaged in business for Home Rule Municipal Retailers' Occupation Tax purposes with respect to such sale.

DISCUSSION

The Taxpayer's sales should be sourced to the company headquarters located in CITY, Illinois for purposes of the Municipal Retailers Occupation Tax.

According to Illinois Regulation, 86 Ill. Adm. Code 270.115(a)(1), 'for a seller to incur Home Rule Municipal Retailers' Occupation Tax liability in a given home rule

municipality, the sale must be made in the course of such seller's engaging in the retail business within such home rule municipality.' In determining where 'selling' occurs, Illinois Regulation, 86 Ill. Adm. Code 270.115(b)(1), offers guidance as to where a seller is deemed to accept an order, and states in part 'the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling.'

In the Taxpayer's case, sales are initiated through field salespeople throughout the state of Illinois. The field salespeople solicit business from customers, design a solution for the particular customer and then submit the specifications to the company headquarters for the generation of a proposal. The proposal is then sent to the customer, who may then accept the terms of the proposal and return the proposal to the company headquarters for approval. As such, all of the relevant proposal generation, pricing, proposal review, credit approval, payment and acceptance of orders is performed at the company headquarters. In this manner, as the Department has indicated in the Regulations discussed above, 'the most important single factor in the occupation of selling,' the acceptance of the order, or proposal in our case, takes place at the company headquarters. Further, all of the factors important in selling, except for the solicitation of the business and the consultation with the customer regarding the specific custom solution to be implemented, take place at the company headquarters.

CONCLUSION

The Taxpayer's acceptance of sales order proposals, as determined by the criteria set forth in Illinois Regulation, 86 Illinois Administrative Code 270.115, will take place in CITY, and thus the Taxpayer's sales that are accepted from the CITY company headquarters should be sourced to the CITY company headquarters for purposes of the Municipal Retailers Occupation Tax.

Enclosed is a Power of Attorney authorizing us to represent the Taxpayer in this matter. Please contact me if you have any questions or require additional information.

The Department's regulations state that "enough of the selling activity must occur within the home rule municipality to justify concluding that the seller is engaged in business within the home rule municipality with respect to that sale." 86 Ill. Adm. Code 270.115(a)(1). (emphasis added) The Department has opined that the seller's acceptance of the customer's purchase order is the "most important single factor" in the occupation of selling. However, when order acceptance activity takes place in more than one jurisdiction, the facts and circumstances surrounding the sale must be carefully scrutinized to assure that "enough" of the acceptance activity has occurred in the home rule municipality to justify the conclusion that the sale took place there. This inquiry will ordinarily be fact-intensive and require an examination of all of the processes and procedures performed by the seller from the time the customer contacts the seller until the goods are delivered. Significantly, the Department "will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary." 86 Ill. Adm. Code 270.115(b)(2) (emphasis added.)

Ordinarily, therefore, the Department will not consider a home rule municipality to be the situs of the sale merely because a company representative physically housed in that jurisdiction performs a computer-assisted credit check on the prospective customer and "approves" or "releases" the purchase order. This is so even if the credit check is the final step in the company's order

acceptance process. This is implicit in the Department's previous guidance that selling usually occurs where the purchaser accepts "a complete and unconditional offer to sell."

You indicate that except for the solicitation of the business and the consultation with the customer regarding the specific custom solution to be implemented, that all other factors important to selling take place in CITY, Illinois at the company's headquarters. Therefore, the tax rate in CITY, Illinois applies.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

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